

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2096

2005 SENATE TRANSPORTATION

SB 2096

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2096

Senate Transportation Committee

☐ Conference Committee

Hearing Date 1/07/05

Tape Number	Side A	Side B	Meter #
1		x	3260-5145
Committee Clerk Signature <i>Mary K Monson</i>			

Minutes:

Chairman Trenbeath opened the hearing on SB 2096 relating to automobile warranty contracts and requirements relating to contractual liability insurance for warranty providers.

All members were present.

Chuck Johnson (ND Insurance Department) See attached testimony.

Senator Espgaard questioned whether the warranty insurance one might buy today has reinsurance on it. And, if a company goes broke, the policyholder would be out of the money.

Senator Trenbeath replied that there may be reinsurance but there is no requirement that it be a state group.

Chuck Johnson Today there is a requirement that an auto dealer that does provide auto warranty programs has to have a backup insurance policy. The company that provides that policy may be either an insurance company that is part of the Guaranty Association that does provide the backup insurance or it may not be.

Senator Mutch asked if the car dealer pays a fee to the ND Guaranty Association and do they provide the insurance or do they go to another carrier to backup.

Chuck Johnson The car dealer would buy the insurance policy from the insurance company so it would pay a premium to the insurance company for that insurance. If it fails, then the insurance company would force an assessment on all the other insurance companies in the state that are in property and casualty that are members of the Association. Then that assessment is used to pay off the claims.

Senator Warner asked if there is an examination process where the Insurance Commission inspects the books of insurance companies and intervenes before they go under.

Chuck Johnson replied that there is. (Meter 4100) There are warning signs that show up when companies file quarterly reports and different levels of supervision that occur.

Tom Herman (Insurance Agent) Testified in favor of SB 2096. (Meter 4500) The reason he is in favor is because he represented National Warranty several years ago and wasn't familiar with risk retention at the time. There was no oversight and this company was good at hiding the numbers. There were about five thousand contracts in the state. About 80-90% have expired by now. The dealers of ND have stepped up and taken care of their customers even though they weren't legally obligated to do so. By the end of this year most of the remaining service contracts will have expired. As an agent, he wishes this would have been around 5-6 years ago. It could have saved a lot money and heartache.

Bob Lamp (ND Automobile Association) Supports SB 2096. Dealers feel this is a good correction to a situation that turned out to be not a very good situation.

There was no testimony in opposition of SB 2096.

Page 3

Senate Transportation Committee

Bill/Resolution Number SB 2096

Hearing Date 1-07-05

The hearing was closed.

Senator Espegard motioned a **Do Pass**. Seconded by **Senator Bercier**. Roll call vote 6-0-0.

Passed. Floor carrier is **Senator Warner**.

Date: 1-7-05
Roll Call Vote #: 1

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO SB 2096

Senate TRANSPORTATION Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Sen. Espegard Seconded By Sen. Bercier

Senators	Yes	No	Senators	Yes	No
Senator Espegard	✓		Senator Bercier	✓	
Senator Mutch	✓		Senator Warner	✓	
Senator Nething	✓				
Senator Trenbeath, Chairman	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Warner

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
January 7, 2005 1:00 p.m.

Module No: SR-04-0192
Carrier: Warner
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2096: Transportation Committee (Sen. Trenbeath, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2096 was placed on the
Eleventh order on the calendar.

2005 HOUSE TRANSPORTATION

SB 2096

2005 HOUSE STANDING COMMITTEE MINUTES

BILL NO. SB 2096

House Transportation Committee

☐ Conference Committee

Hearing Date February 11, 2005

Tape Number	Side A	Side B	Meter #
1	X		0.7-41.7
Committee Clerk Signature <i>De Louie D. Humeck</i>			

Minutes:

Chairman Weisz opened the hearing on SB 2096 A Bill for an Act to amend and reenact section 26.1-40-18 of the North Dakota Century Code, relating to automobile warranty contracts and requirements relating to contractual liability insurance for warranty providers.

Charles E. Johnson: (See attached testimony #1) This did pass through the senate without opposition, but I understand there is some opposition here today. There will be some amendments too.

Chairman Weisz (3.3) Is it currently possible for an auto dealer do an off road auto warranty and insure itself? That is OK. Under this bill that would be prohibited. What does it take to be a member and insurer of the ND Guarantee Association?

Charles E. Johnson:(3.9) The company that writes insurance in the state, first they have to be permitted to sell insurance here and they automatically become a member of the guarantee association by just getting certified. They have to pay a tax to the state every year and in the

event of insolvency, they are subject to an assessment. All of the insurance companies doing business in the state are assessed to recover the money that are paid out by the guarantee association in the event of any insolvency.

Rep. Iverson(4.4) These risk potential groups. I guess I have never heard anything like that. Do you track them?

Charles E. Johnson: Back in 1980's there was a real hard market where companies had trouble getting liability insurance. So the federal government steps in and essentially passed a law that allowed entities; companies that were similar in risk, were allowed to form a risk potential group so in that way they could share the risk amongst themselves. States, other than the domestic states can get involved in the financial oversights. There are certain less stringent oversight entities. They are required to report to some of the state domestic financial oversight. They have less supervision and of course they are not required to be guaranteed. This is like a self-insurance pool almost.

Rep. Thorpe(6.0) Does the commissioners office oversee this group?

Charles E. Johnson: We do for a regular insurance company, but not for this group.

Rep. Thorpe Is it a extended risk warranty or a regular warranty?

Charles E. Johnson: Most often it would be the extended warranty. Like when you buy a new car of course you get a warranty with the new car with the actually dealer. This would also be for used cars that are sold for parts and labor or whatever. These companies offer that.

Rep. Dosch(6.9) Now the National Warranty Service, they were a backup insurer?

Charles E. Johnson: They were a backup to the dealer.

Rep. Dosch Backup to me means if the main insurance fails you go to the backup? Did the main insurance fail?

Charles E. Johnson: The dealer sells you an insurance warranty so that if you have trouble with the car, we will cover it, but you have to pay me \$1000 for 3 years or 30,000 miles. To cover their risk they buy this insurance policy from this entity. That is the insurance that backs up the auto dealer. Actually the auto dealer is the person that actually issues the warranty. The backup insurer provides the coverage.

Rep. Dosch Wouldn't the auto dealer have to be the one responsible for the warranty. I understand they are responsible and if they weren't fortunately they would be able to collect because of the backup insurance. Shouldn't it have been covered. How could anyone have been left out on this?

Charles E. Johnson: (8.6) There are two kinds of contracts. The dealer sometimes issues their own contract. Sometimes they work with a third party administrator and that administrator issues the contract. There was a third party administrator that was affiliated with this National Warranty Service. That administrator also went broke. Just like if your auto dealer went broke too.

Rep. Dosch What is this bill actually doing? Can there still be third party out there and the third party do they still have to have backup insurance?

Charles E. Johnson: (10.4) What this bill provides is if a warranty contract is issued by either the dealer or a third party administrator that dealer or certified administrator has to have a backup insurance policy and it has to be with a company that is a member of Risk Potential Group.

Chairman Weisz(10.8) If these policies all run through dealers why would there be an option where some dealers honored and some didn't, if the contract was made directly some advertising in the mail that offered you an extended warranty and you weren't even involved in it. Either the dealer is on the hook because they wrote the warranty or they are not because they were part of the warranty?

Charles E. Johnson (11.4) You are correct. If the dealer issued the warranty and if he accepted the responsibility of the warranty then he is on the hook initially. The dealers were obligated and they had to honor the contract.

Rep. Delmore(12.2) What is the additional cost and does it get passed on to the consumer? How many times do we need a backup to a backup?

Charles E. Johnson: It is hard to say what the cost is? I am not sure how the rates would compare, but I can tell you it doesn't happen very often, when they do it causes a problem. Allot of warranties are sold and it can cause allot of unhappy consumers.

Chairman Weisz (13.2) Anyone else in support of SB 2096.

Bob Lamp: Automobile Dealers Association of ND:(13.5) We do support this bill. There were some problems with this company in sales of smart choice leases. They were third party administrator contracts and I think it is safe for me to say most of those contracts were honored. I don't know how many complaints came into the department, but I know they were honored.

Chairman Weisz You don't have problem with the idea that an individual auto dealer would not be able to do its own auto warranty.

Bob Lamp:I don't have a problem with that. There is very little of that going on. Most of the contracts are manufacture contracts lot of our dealers use that source exclusively. Many of them

do use third party administrators. We think the idea of them being a member of the ND Warranty Assoc. is a good idea. That just gives them that much more protection for that contract.

Rep. Vigesaa(14.7) Please explain to the committee how a third party administrator would work for a dealer.

Bob Lamp: The dealer will contract with a specific third party company that has these contracts to sell. Then they will sell that contract to the consumer on behalf of that company. So actually that is the third party administrators company. For selling that product the dealer gets a percent of the premium for doing that. When there is any problems they bring it back to that individual dealer and do the repair work on the vehicle. The third party company actually stands behind the fiancer on that repair. There have been times when that third party has gone under. This is the first I know of for many years. Our interest as a dealer group is to be sure that there is a substantial resource behind these third party administrators the customer is going to get what he has coming.

Chairman Weisz Do the repairs have to be made at the particular dealer?

Bob Lamp: I do not think they have to be done at that specific dealership. Typically they would be, but not necessarily do they have to be.

Rep. Ruby (16.3) If dealers are worried about this, wouldn't they already choose a company that they are familiar.

Bob Lamp: The Smart Choice contract was warranty for older higher mileage vehicles and they weren't able to find a company to underwrite those kind of vehicles.

Rep. Delmore Can you tell me what the increased cost might be? Would it be very significant?

Bob Lamp: As an association we endorse an company that sells warranties. This company is part of the ND Guarantee Association and they are selling in competition with all other warranty companies. Their pricing is very competitive with most other companies. I don't think there would be a huge variation in those premiums. I don't sell those so I am not sure.

Rep. Schmidt(18.1) Because this company was in the Caiman Islands, was there no recourse. You said they failed. Most of them are crooks. Because they were offshore you have no recourse.

Bob Lamp: (18.5) There are some people here better able to answer that question.

Rep. Dosch Would it be possible to ask Chuck one more questions?

Chairman Weisz Is there anyone in opposition of SB 2096?

Paul Sanderson:(19.9) Property Casualty Insurance Association of America(See attached testimony #2)

Chairman Weisz(28.1) \$15 million and \$10 million in your amendments, can you give us a basis for those amounts.

Paul Sanderson: The property causality insurer has a service contract committee. Those amendments are their model amendments that they are suggesting. Not only here, but throughout a number of states to address the issue that has raised from the insolvency of National Warranty Service. There are a number of risk potential groups that thing these figures are extremely high and they would not be able to meet them. I do believe these are fair. I would caution the committee, if we do negotiate the numbers on those amendments, set the numbers so extremely high that it would be the same as eliminating the risk potential from the market. The numbers are too high and no risk potential group could meet those numbers so it would be the same as if

the bill never existed. For the record I believe there are 9 auto services risk potential groups in ND right now that are registered with the department.

Chairman Weisz(29.7) How many of those would meet the \$10-\$15 million?

Paul Sanderson:(29.8) I don't have the number off hand. I will attempt to get those numbers for you.

Rep. Iverson What is the current amounts?

Paul Sanderson: As far as I know there are no current thresholds. This is the Risk Retention and PCI's attempt to help address the issues raised by the insurance department that the consumer needs some sort of financial protection.

Rep. Iverson You are saying that anyone can go out now and start one of these companies with no surplus in the bank what so ever.

Paul Sanderson:(30.6) What these risk retention groups need to do is become organized in their domicile state would have the same sort of regulations as they have, other than the guarantee association that they would impose on any other insurance company. One of the major ones we look at they are domicile in South Carolina. They would be under South Carolina's financial constraints and that various from state to state.

Rep. Ruby(31.4) So you believe that it is possible with these thresholds we could limit the number of insurers that are available in the state compared to what we have now?

Paul Sanderson: What I believe this would do is have the insurance department do a check on them when they register so they there is some sort of financial backing and not any job six-pack can do this. This I think would allow the consumer protection that this department is seeking without totally eliminating risk retention groups. The studies have shown that they risk retention

groups have taken a beating because of one bad apple so there is now attempts to eliminate all the good companies.

Rep. Ruby(32.9)What I am wondering. There are states that have lower thresholds than these numbers. They would not be eliminated from providing insurance in the state.

Paul Sanderson: That is a possibility. I am not familiar with all the state requirements. These were figures that the risk retention and PCI groups used for a model.

Chairman Weisz Anyone else here in opposition of of SB 2096?

Charles E. Johnson: Came up so Rep. Dosch could ask his questions.

Rep. Dosch The question I had with the passage of this bill as it with the amendments, that would subject the auto dealers in the state to these requirements. Are out of state companies still be allowed to continue to do warranties or would they have to be subject to ND law or is it only ND dealers?

Charles E. Johnson: Anyone that sells a warranty in the state would be subject to our laws. Also a company that sells over the Internet would have to meet ND laws. How we police that is difficult.

Rep. Thorpe(35.3) Has the insurance commissioners office gone over the proposed amendments?

Charles E. Johnson: We recognize that the federal law does prevent states from discriminating against the risk potential group. We should look at the intent of the law and also look at the impact of the law. We would like a little time to discuss the numbers on the amendment with the risk potential group.

Rep. Thorpe Concerned about the amount of dollars. Would it raise the cost of insurance to the consumer?

Charles E. Johnson:(38.2) If there is a risk potential group that could not meet that \$10 million dollars then that group could not sell products here in North Dakota. There maybe a higher premium, but you get the benefit. Rep. Iverson asked what North Dakotas threshold would be per capitol in the event the risk potential group organized here and for other risk potential groups. That is just the minimum; there after they have to have adequate capital to cover the risk they are assuming. They have to determine the likelihood they will be paying claims; how many claims they have to pay; how much they are going to be and set aside adequate resources to cover that.

Rep. Dosch(40.5) As you are doing your analysis we would appreciate if you would take a look at those who are doing business in the state and whatever numbers you have to come up with see how it impacts those groups that are already doing business here.

Charles E. Johnson(41.0)Consumer go into the dealer and they think they are dealing with the dealer when they buy these warranties, but the dealer is just acting as the agent for a third party administrator. They are just processing the paperwork, just like you would go to a regular insurance agent and buy it.

Hearing closed (41.6)

2005 HOUSE STANDING COMMITTEE MINUTES

BILL NO. SB 2096

House Transportation Committee

☐ Conference Committee

Hearing Date March 17, 2005

Tape Number	Side A	Side B	Meter #
1	X		44.4-52.3
1		X	4.7-8.2
Committee Clerk Signature <i>De Lore Alshimer</i>			

Minutes:

Chairman Weisz reopened the hearing on SB 2096.

Rep. Vigesaa I just did more research and we have questions about the amendments that Paul Sanderson dropped off on behalf of the industry. There was some questions on why the limits were set at a certain point. They seem higher than what we would normally ask for in a situation. I have been in contact with Chuck Johnson in the Insurance Department and Bob Lamp with the Auto Dealers Association and everyone is in agreement that these amendments are fine. The limits are higher.

Chairman Weisz(46.3) Just to be clear. This is not a matter of insurance protection to squeeze out the smaller risk protection groups in favor of big business.

Rep. Vigesaa That does not appear to be the case. There are nine risk protection groups registered in ND. The sheriff department is comfortable with this too. The reason the amendments have come forth is that the feds have indicated that risk retention groups can not be

part of a guarantee association. So in lieu of the guarantee association in putting forth these stringent limits so that they are guaranteeing themselves. All the parties are on board with this.

Rep. Schmidt (48.3) This would eliminate any company that is not domiciled in the United States.

Chairman Weisz I don't believe that would prohibit a company from being anywhere in the world. They would have to meet the requirements that are established they can do business here.

Rep. Meyer What does it mean when you have a paid in capital?

Chairman Weisz It is an equity position in the company. This is what you have. It is equity in the company. If it is under that it has to have a 3-1 ratio it so you are not writing too much premiums.

Rep. Owens(50.8) When we first saw this bill I was concerned about insurance. You deal with the insurer and not the administrator of the policy. That business about out of country, if I am reading this right, both of these amendments talk about a state of domicile. How can they have a state of domicile as London? (52.3)

Tape 1, Side B

Chairman Weisz(4.8) State of domicile just means where you are located. Any further questions from the committee.

Rep. Thorpe(5.0) How does this affect some of the companies that are writing these policies through their own agencies.

Rep. Vigasaa Are you referring to auto dealers. Auto dealers almost exclusively write for themselves. The warranty is issued by a third party. For example, like Universal Underwriters, American Financial, those would be the third party administrators. If they use a risk potential

group to back up those policies, then they would be covered by the amendments. If they are covered by an insurance company that is allowed to be a member of the guaranteed association, they would be covered under that. So either way, this bill is going to insure that the insurance companies backing up the dealers contracts will cover. Did I answer the question?

Rep. Thorpe Yes, I think I understand. When did we first hear this bill, do you recall.

Chairman Weisz(6.3) It has been awhile. We have been waiting for some information and they have had some questions from the insurance department. If for some reason a dealer just wanted to cover it. He could just do that.

Rep. Vigesaa(6.8) We are not changing current law. Yes, they would need to have some insurance behind them of some kind.

Motion Made By Rep. Vigesaa Seconded by Rep. Owens to accept the amendments
Voice vote carried. No opposition

Chairman Weisz We have an amended bill in front of us.

Motion Made by Rep. Vigesaa Seconded By Rep. Schmidt

Do Pass As Amend. 13 Yes 0 No 2 Absent Carrier: Rep. Vigesaa

(8.2)

Date: 3-17-05
Roll Call Vote #:

2005 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2096

House Transportation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken No Pass As Amend.

Motion Made By Rep. Iverson Seconded By Rep. Schmidt

Representatives	Yes	No	Representatives	Yes	No
Rep. Weisz - Chairman	✓		Rep. Delmore	✓	
Rep. Hawken - Vice Chair.	<u>absent</u>		Rep. Meyer	✓	
Rep. Bernstein	✓		Rep. Schmidt	✓	
Rep. Dosch	✓		Rep. Thorpe	✓	
Rep. Iverson	✓				
Rep. Kelsch	<u>absent</u>				
Rep. Owens	✓				
Rep. Price	✓				
Rep. Ruby	✓				
Rep. Vigesaa	✓				
Rep. Weiler	✓				

Total (Yes) 13 No 0

Absent 2

Floor Assignment Rep. Vigesaa

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2096: Transportation Committee (Rep. Welsz, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). SB 2096 was placed on the Sixth order on the calendar.

Page 1, line 7, after the second boldfaced period insert:

"1."

Page 1, line 10, replace "The policy must be a policy" with:

- "2. The policy must be issued by an insurer licensed, registered, or otherwise authorized to do business in this state. From the time the policy is filed with the commissioner:
- a. The insurer shall maintain surplus as to policyholders and paid-in capital of at least fifteen million dollars and annually file copies of the insurer's audited financial statements, the national association of insurance commissioners annual statement, and the actuarial certification required by and filed in the insurer's state of domicile; or
 - b. The insurer shall maintain surplus as to policyholders and paid-in capital of between fifteen million dollars and ten million dollars, demonstrate to the satisfaction of the commissioner that the company maintains a ratio of net written premiums, wherever written, to surplus as to policyholders and paid-in capital of not greater than three to one, and annually file copies of the insurer's audited financial statements, the national association of insurance commissioners annual statement, and the actuarial certification required by and filed in the insurer's state of domicile."

Page 1, remove lines 11 and 12

Renumber accordingly

2005 SENATE TRANSPORTATION

CONFERENCE COMMITTEE

SB 2096

2005 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2096

Senate Transportation Committee

■ Conference Committee

Hearing Date 4-05-05

Tape Number	Side A	Side B	Meter #
1	x		410-890
Committee Clerk Signature <i>Mary K. Monson</i>			

Minutes:

Chairman Mutch called the Conference Committee on SB 2096 to order. Roll call was taken with all members present: Sen. Mutch, Sen. Espgaard, Sen. Bercier, Rep. Vigessaa, Rep. Bernstein, and Rep. Thorpe.

Chairman Mutch asked the House Chairman to give an explanation of what they did to the bill.

Representative Vigessaa said the testimony they heard in the House probably was not heard in the Senate. The original bill called for the insurance companies that back up the auto warranties be members of the ND Insurance Guaranty Association. Those are generally known as Risk Retention Groups and they are not allowed by federal law to be part of an insurance guaranty fund. He had testimony that was presented in the House from Paul Sanderson which he referred to. (See attached testimony.) This testimony had not been presented in the Senate. There have been other states that have run into this same situation. The amendments that were proposed were brought forth by Mr. Sanderson who represents Risk Retention Groups. They were gone

through thoroughly with the Insurance Dept. who didn't have any problem with them. The amendments are actually an industry model. They have been adopted most recently in California in 2004. The Service Contract Industry Council and The Property and Casualty Insurers Service Contract Committee support this language. The amendments set some financial parameters for these companies to assure they are solvent enough to handle claims. The reason for the bill, in the first place, is because there was an insolvency of a company that affected ND customers several years ago.

Part (a) of the amendment deals with companies that have at least fifteen million dollars of paid in capital. Part (b) says that if they are between ten and fifteen million dollars there has to be a certain ratio of paid in capital versus premiums.

Senator Espegard asked if these parameters were set by the industry.

Representative Vigesaa said they brought forth the amendment but they were run through the Insurance Dept. who said they were fine.

A short discussion clarifying that they can't belong to the ND Insurance Guaranty Association by federal law. The law is the Product Liability Risk Retention Act of 1981.

Senator Espegard made a motion that the **Senate Accede to the House Amendments.**

Seconded by **Senator Bercier**. Roll call vote 6-0-0. **Passed.**

Carrier is **Senator Mutch**.

Date: 4-5-05
Roll Call Vote #:

2005 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. SB 2096

Senate **TRANSPORTATION** Committee

☒ Check here for **Conference Committee**

Legislative Council Amendment Number

Action Taken Senate Accede To House Amendments

Motion Made By Sen. Espeland Seconded By Sen. Bersier

[illegible]

Total (Yes) 6 No 0

Absent 0

Floor Assignment Senator Mutch

If the vote is on an amendment, briefly indicate intent:

Insert LC: .

REPORT OF CONFERENCE COMMITTEE

SB 2096: Your conference committee (Sens. Mutch, Espegard, Bercier and Reps. Vigesaa, Bernstein, Thorpe) recommends that the **SENATE ACCEDE** to the House amendments on SJ pages 972-973 and place SB 2096 on the Seventh order.

SB 2096 was placed on the Seventh order of business on the calendar.

2005 TESTIMONY

SB 2096

SENATE BILL NO. 2096

Presented by: Charles E. Johnson
General Counsel
North Dakota Insurance Department

Before: Senate Transportation Committee
Senator Thomas L. Trenbeath, Chairman

Date: January 7, 2005

*Same
Given to
House*

TESTIMONY

Mr. Chairman and members of the committee:

Good morning. My name is Charles Johnson, General Counsel with the North Dakota Insurance Department. I stand before you today to introduce Senate Bill No. 2096. The Insurance Department sponsored this bill.

Senate Bill No. 2096 deals with automobile warranty programs.

The present law requires that an automobile dealer or a third-party administrator who issues an auto warranty contract maintain a backup insurance policy to cover the dealer's or administrator's obligation under the warranty contract.

Senate Bill No. 2096 requires that the backup policy be issued by an insurance company that is a member of the North Dakota Guaranty Association so that in the event of the insolvency of the insurance company, the Guaranty Association will step in and pay the warranty claims.

Senate Bill No. 2096 is in response to the insolvency of National Warranty Service, a Cayman Island risk retention group that provided backup auto warranty insurance for

North Dakota auto dealers and for an affiliated third party administrator. The company failed in 2003 and left numerous consumers with unpaid service claims.

The North Dakota Guaranty Association was not required to honor the claims because risk retention groups are not members of the Guaranty Association.

Some automobile dealers honored some of the claims, but others did not and consumers both in North Dakota and in other states were left without recourse for their unpaid claims.

Risk retention groups are like insurance companies in that they provide insurance protection for specific groups, in this case, automobile dealers and others that sell auto warranty programs.

The risk retention groups are allowed to exist under federal law and are subject to less state regulatory oversight than a regular insurance company. They are not required to be members of the Guaranty Association and are not subject to assessments by the Guaranty Association. Thus, the Guaranty Association is not required to pay claims if the risk retention group fails.

To avoid the problems created by the failure of National Warranty Service, the Commissioner recommends that those auto dealer and third party administrators that sell auto warranty contracts be required to buy backup insurance from a regular insurance company, as distinguished from a risk retention group, so that the Guaranty Association is available if the insurance company becomes insolvent.

Thank you. I will be glad to answer any questions that you might have.

2-11-05 SB 2096
#2
TESTIMONY OF PAUL SANDERSON ON SB 2096

Mr. Chairman and members of the House Transportation Committee, my name is Paul Sanderson. I represent the Property Casualty Insurers Association of America. PCI is the nation's premier insurer trade association, representing over 1,000 companies that write 39.1 percent of the nation's automobile, homeowners, and business insurance. Risk Retention Groups are one set of companies belonging to the PCI, and are the reason we are here today.

In response to the escalating cost of product liability premiums in the late 1970's and early 1980's, Congress enacted the Product Liability Risk Retention Act of 1981 to encourage formation and growth of Risk Retention Group's. A Risk Retention Group (RRG) is a liability insurance company that is owned by its members whose primary activity consists of assuming and spreading all, or any portion, of the liability exposure of its group members. In 1986, Congress amended the PLRRA and created the Liability Risk Retention Act. The Liability Risk Retention Act allowed RRGs to provide additional types of liability insurance.

• The cornerstone of the LRRRA was to encourage formation and growth of RRGs by reducing state regulation, thereby reducing the expense of RRGs and the cost of insurance to its members. Under the LRRRA, a RRG is allowed to provide insurance in all states, free of regulations in those states, as long as it complies with the insurance laws of the state it chooses as its "chartering jurisdiction". In order to ensure that non-chartering states do not attempt burdensome regulations, the LRRRA preempts certain types of regulations by these states.

Two specific provisions of the LRRRA are critical to SB 2096. The LRRRA specifically provides that a RRG is exempt from any state law rule or regulation which would require an RRG to participate in an insurance insolvency guaranty association. North Dakota also enacted rules governing RRGs in 1987, and specifically provides at § 26.1-46-04 that no RRG may join or contribute to any insurance insolvency guaranty fund in North Dakota. The other key provision in the LRRRA is that no state may enact any law or regulation which otherwise discriminates against a risk retention group.

The LRRRA does allow non-chartering states to regulate solvency of RRGs by passing financial responsibility laws to protect the public against the risk of insolvency from an RRG. The Insurance Department uses this language as the justification for SB 2096 which would eliminate RRGs from the automobile warranty and service insurance market. The issue becomes whether this exclusion of RRG's is preempted by federal law precluding unfair discrimination or whether this is a proper financial regulation of RRGs under the LRRRA.

The issue has been decided by the 9th Circuit Federal Courts in National Warranty Insurance Company RRG v. Greenfield, 214 F.3d 1073 (2000). Oregon enacted an almost identical law to SB 2096, which would have required insurers in Oregon providing vehicle service insurance contracts to be a member of the Oregon Insurance Guaranty Association. A RRG filed a lawsuit against the Oregon government and a lengthy court battle ensued. The courts hearing the original case and the appeals all agreed that the Oregon law unfairly discriminated against RRGs and was preempted by the LRRRA.

The RRGs are aware of the unfortunate financial problem created by the insolvency of one RRG. However, there is no evidence to indicate that RRG's as a group are financially unsound so as to justify exclusion from this segment of the market as would take place in SB 2096. While the PCI believes that the bill as proposed would be preempted by the LRRRA, it has presented an amendment to the Insurance Department which would address the financial solvency concerns of the Department while not unfairly discriminating against RRGs. A copy of the proposed amendment is attached to this testimony, along with a letter from the Chairperson of the PCI's Risk Retention Committee.

Thank you for your consideration.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2096

*California
adopted
in 04.*

Page 1, line 10, replace "The policy must be a policy" with "Such policy shall be issued by an insurer licensed, registered, or otherwise authorized to do business in this state, and either:

(a) at the time the policy is filed with the commissioner, and continuously thereafter, (i) maintains surplus as to policyholders and paid-in capital of at least fifteen million dollars (\$15,000,000) and (ii) annually files copies of the insurer's audited financial statements, its NAIC Annual Statement, and the actuarial certification required by and filed in the insurer's state of domicile; or

(b) at the time the policy is filed with the commissioner, and continuously thereafter, (i) maintains surplus as to policyholders and paid-in capital of less than fifteen million dollars (\$15,000,000) but at least equal to ten million dollars (\$10,000,000), (ii) demonstrates to the satisfaction of the commissioner that the company maintains a ratio of net written premiums, wherever written, to surplus as to policyholders and paid-in capital of not greater than 3 to 1, and (iii) annually files copies of the insurer's audited financial statements, its NAIC Annual Statement, and the actuarial certification required by and filed in the insurer's state of domicile."

Page 1, remove lines 11 and 12.

Industry model

Service Contract Industry Council

*Property & Casualty Insurers Service Contract
Committee*

*support these higher limit
to restore confidence in Risk Retention.*



GSFS Risk Retention Group, Inc.

Mailing Address:
13201 NW Freeway, Suite 801
Houston, TX 77040

Physical Address:
3 Lockwood Drive, Suite 303A
Charleston, SC 29401

February 10, 2005

Chairman Weisz and
Members of the House Transportation Committee
State Capitol
600 East Boulevard
Bismarck, North Dakota 58505-0360

Re: Senate Bill 2096

Dear Representative Weisz and Members of the Committee:

GSFS Risk Retention Group, Inc. ("GSFS RRG"), a risk retention group registered to do business in North Dakota, respectfully submits this letter in opposition to SB 2096. GSFS RRG issues contractual liability policies to GS Administrators, Inc. ("GSA") to cover GSA's obligations under vehicle service contracts. At the present time, GSA does not have any active accounts in North Dakota but it is actively seeking accounts. The proposed amendment would bar GSFS RRG from insuring GSA's obligations in North Dakota.

GSFS RRG and GSA object to the amendment on the following grounds:

- The proposed amendment is discriminatory to RRG's. Present law requires that automobile dealers or third party administrators issuing vehicle service contracts obtain a contractual liability insurance policy. The amendment provides that the policy can only be issued by insurers who are members of the North Dakota guaranty association. RRG's are not members. RRG's are prohibited by Federal law (15 U.S.C § 3902 (a)(2)) from participating in state guaranty associations.
- The discrimination against RRG's is in violation of Federal law. 15 U.S.C § 3902(a)(4) prohibits states from enforcing laws that discriminate against RRG's. The amendment is apparently designed to keep RRG's out of the vehicle service contract industry directly in contravention of the law.
- The provision is anti-competitive in that it discriminates against a segment of insurers who are barred by law from participating in the state guaranty association.
- The Ninth Circuit of Appeals has found a similar provision in Washington law discriminatory in violation of the Federal law. While we understand that the Ninth Circuit opinion is not binding on North Dakota courts, the Ninth Circuit's opinion is directly on point as Washington's statute was similar to this amendment. Moreover, it is

the only circuit court opinion addressing the matter as it relates to vehicle service contracts.

We understand that this amendment is being made at the insurance commissioner's request, so I have sent a similar letter to him as well. The testimony of the department at the Senate Hearing on this bill indicates that it is a response to the failure of National Warranty Insurance Company ("NWIC"). While NWIC's failure was regrettable for all involved, including other reputable RRG's in the service contract industry, the failure of one RRG should not be imputed to all other RRG's.

There is no evidence to indicate that RRG's as a group are financially unsound so as to justify exclusion from this segment of the market. The success rate of other risk retention groups renders such a reaction unjustified. According to an article in the October 2003 issue of *The Risk Retention Reporter*, "The annual rate of insolvencies for property/casualty insurers and the rate of insolvencies for risk retention groups is comparable." In short, of the insolvencies reported, a majority of the failed RRG's were formed during the infancy of the Liability Risk Retention Act (the "LRRRA") when regulatory requirements were just being established. The collapse of NWIC, further exemplifies this particular statistic. NWIC was (i) formed prior to the 1986 amendments to the LRRRA, (ii) "grandfathered" into the provisions of the LRRRA, (iii) chartered in the Cayman Islands and (iv) subject to less stringent regulatory oversight than RRG's formed under the captive laws of U.S. states.

Moreover, most risk retention groups formed now must be domiciled in the United States and are subject to more regulatory oversight than was NWIC. Our company is domiciled in South Carolina. The South Carolina Insurance Department (the "Department") monitors the company. We file NAIC annual and quarterly statements. The Department requires semi-annual actuarial certifications. Furthermore, GSFS RRG has met the Department's other standards, including solvency, market conduct, management and examinations. We are currently registered in 46 non-domiliary states as well. We contend that there is no justification for us to be excluded from doing business in North Dakota.

As an alternative, we propose the following provision. This provision would impose financial solvency requirements for *all* insurers seeking to issue policies under the law. We believe that this suggestion is non-discriminatory way to strengthen your state's law:

Such policy shall be issued by an insurer licensed, registered, or otherwise authorized to do business in this state, and either:

- (a) at the time the policy is filed with the commissioner, and continuously thereafter, (i) maintains surplus as to policyholders and paid-in capital of at least fifteen million dollars (\$15,000,000) and (ii) annually files copies of the insurer's audited financial statements, its NAIC Annual Statement, and the actuarial certification required by and filed in the insurer's state of domicile; or

(b) at the time the policy is filed with the commissioner, and continuously thereafter, (i) maintains surplus as to policyholders and paid-in capital of less than fifteen million dollars (\$15,000,000) but at least equal to ten million dollars (\$10,000,000), (ii) demonstrates to the satisfaction of the commissioner that the company maintains a ratio of net written premiums, wherever written, to surplus as to policyholders and paid-in capital of not greater than 3 to 1, and (iii) annually files copies of the insurer's audited financial statements, its NAIC Annual Statement, and the actuarial certification required by and filed in the insurer's state of domicile.

This language has been accepted by industry members and several trade groups, including the Property Casualty Insurers of America Service Contract Reimbursement Committee and the Service Contract Industry Council. Several states are considering this type of financial solvency requirement.

We appreciate this opportunity to comment and would be more than happy to discuss other options that do not unfairly discriminate against companies such as ours who have done no wrong and are legitimate insurance companies operating legitimate businesses nationwide. I can be reached at 713-580-3161 to answer any questions or to discuss this further.

Very truly yours,



Diane Weber Greene
Vice President, Senior Counsel

cc: Paul Sanderson
Don Griffin

Handed in later!

ZUGER KIRMIS & SMITH

COUNSELORS AND ATTORNEYS AT LAW

Lyle W. Kirmis
Lance D. Schreiner, P.C.
James S. Hill, P.C. ***
Patrick J. Ward***^
Rebecca S. Thiem, P.C.**
Jerry W. Evenson, P.C.^
Lawrence A. Dopson
Lawrence E. King, P.C.**
Tracy Vigness Kolb, P.C.
Shawnda R. Ereth**+
Constance N. Hofland**
Paul R. Sanderson
Aaron K. Webb**

316 North Fifth Street
Provident Building
P.O. Box 1695
Bismarck, ND 58502-1695
(701) 223-2711
fax (701) 223-7387
zkslaw@zkslaw.com
www.zkslaw.com

writer's direct e-mail: psanderson@zkslaw.com

Of Counsel
John A. Zuger

Thomas O. Smith
1944-2001

Also licensed in
Illinois *
Minnesota**
Missouri+
Montana++

^Certified Civil Trial Specialist
National Board of Trial Advocacy

February 24, 2005

Chairman Weisz and
Members of the House Transportation Committee

Re: Senate Bill 2096

Dear Chairman Weisz and Members of the Committee:

I represent the Property Casualty Insurers Association of America. During the hearing on SB 2096, I presented the Committee with a proposed amendment on behalf of PCI designed to prevent the discrimination against risk retention groups in the bill. Following the hearing, a conference call was arranged between myself, Diane Greene with PCI, and Charles Johnson and Carol Kessel with the North Dakota Insurance Department. The Department was interested in the figures in the amendment and how they were reached. Following the conference call, PCI provided the Department with additional materials regarding the amendment and risk retention groups.

Mr. Johnson spoke with me this morning and indicated the Department supports the amendment presented to the Committee by PCI. Mr. Johnson requested that I inform the Committee of our conference and the Department's support of the amendment. We would respectfully request that the Committee adopt the amendment presented by PCI. If you have any questions, please feel free to give myself or Mr. Johnson a call. Thank you for your consideration.

Sincerely,



Paul Sanderson
Lobbyist ID # 217